

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

MARGARET MANETTA, as Personal
Representative of the Estate of
ROBERT MANETTA, Deceased,

Plaintiff,

vs.

JAMES E. JOHNSON, DO., MACOMB
SURGICAL ASSOCIATES, a Michigan
corporation, and MT. CLEMENS GENERAL
HOSPITAL, INC., a Michigan non-profit
corporation,

Defendants.

Case No. 2001-1272-NH

OPINION AND ORDER

Defendants James E. Johnson, D.O., and Macomb Surgical Associates (MSA) moved for stay of proceedings pending appeal.

On October 11, 2005, the Court entered an Order of Final Judgment in favor of plaintiff and against defendants, jointly and severally, in the amount of \$1,900,894.15. Defendants have filed separate appeals of right to the Court of Appeals. The Court entered an order approving appeal bond and staying execution of judgment as to defendant Mt. Clemens General Hospital, on the basis of the filing of a surety bond in the amount of \$3,000,000.

Defendant Johnson's insurer, Universal International, has advanced \$100,000 in cash to be posted in a manner to be agreed upon by the parties or ordered by the Court. Defendants now petition the Court to direct the disposition of the \$100,000 insurance policy proceeds and stay proceedings pending appeal under MCR 7.209(E)(1).



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A creditor's exam took place on April 13, 2006, in which defendant Johnson voluntarily submitted himself. In summary, defendant Johnson owns certain assets in his individual name in an approximate amount of \$388,418. The remainder of his assets are jointly owned with others that are not subject to garnishment or execution under Michigan law.

Applicable law

MCR 7.209(E)(1) provides that except as otherwise provided by law or rule, the trial court may order a stay of proceedings, with or without a bond as justice requires. The purpose of a stay bond generally is to protect the prevailing party from losses that could result from the inability to enforce the judgment while enforcement of the judgment is stayed pending appeal. *Wright v Fields*, 412 Mich 227, 230; 313 NW2d 902 (1981). One of the conditions normally imposed is that of an appeal bond to protect the appellee during the pendency of the appeal. *Federal Nat Mortg Ass'n v Wingate* 404 Mich 661, 678; 273 NW2d 456 (1979). As held in *Wingate, supra*, the Court stated, "We do not question the need to protect the rights of an appellee in the case of a stay pending appeal. Appellee's rights and interests are considerable and are recognized in both the court rules and case law of this jurisdiction. At the same time, there is no authority for going further and hindering the right to stay pending appeal by forcing appellant to give more than is required to protect appellee's rights." *Id* at 687.

MCL 600.6104. Proceedings supplementary to judgment; powers of court, provides after judgment for money has been rendered in an action in any court of this state, the judge may, on motion in that action or in a subsequent proceeding:

- (1) Compel a discovery of any property or things in action belonging to a judgment debtor, and of any property, money, or things in action due to him, or held in trust for him;
- (2) Prevent the transfer of any property, money, or things in action, or the payment or delivery thereof to the judgment debtor;

- (3) Order the satisfaction of the judgment out of property, money, or other things in action, liquidated or unliquidated, not exempt from execution;
- (4) Appoint a receiver of any property the judgment debtor has or may thereafter acquire; and
- (5) Make any order as within his discretion seems appropriate in regard to carrying out the full intent and purpose of these provisions to subject any nonexempt assets of any judgment debtor to the satisfaction of any judgment against the judgment debtor.

Discussion

Plaintiff opposes the grant of a stay without a surety bond in what she believes to be a reasonable amount, i.e., \$3,000,000, on the basis that the \$100,000 proposed by defendant Johnson is an insufficient amount to protect plaintiff should the appeal process result in plaintiff's favor. However, as dictated by law, and based on the results of the creditor's exam, the maximum amount defendant Johnson could be liable for at this time is less than \$400,000, as all other assets are exempt from the judgment. Further, the surety bond is not intended to guarantee plaintiff satisfaction of the underlying judgment, rather, its purpose is only to indemnify an appellee against further harm, not as additional security for the original indebtedness. See *Wingate, supra*.

After much deliberation, the Court is satisfied that a stay of proceedings pending appeal is appropriate, and in its discretion, finds that a reasonable surety bond shall be posted by defendants Johnson and/or MSA in the amount of \$200,000. and that defendants Johnson and/or MSA are prohibited from transferring any property during pendency of the appeal.

For the foregoing reasons, the Court GRANTS defendants Johnson and MSA their motion for a stay of proceedings pending appeal, and orders that a surety bond be immediately posted in the amount of \$200,000. Pursuant to MCR 2.602(A)(3), this case is CLOSED.

IT IS SO ORDERED.

Diane M. Druzinski, Circuit Court Judge

Date:

JUN 20 2006

DMD/aac

cc: Samuel A. Meklir, Attorney at Law
Nicholas A. Ianni, Jr., Attorney at Law
John R. Monnich, Attorney at Law
John P. Jacobs, Attorney at Law
James G. Gross, Attorney at Law

DIANE M. DRUZINSKI
CIRCUIT JUDGE

JUN 20 2006

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK
BY: *[Signature]* Court Clerk